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Court strikes down comprehensive plan's environmental protections

By Shannon Sollinger
03/31/2004

The environmental protections that formed the heart of the county's new comprehensive plan were struck down Tuesday by the Circuit Court. The ruling from Circuit Court Judge Thomas D. Horne, released Wednesday, upheld the county's arguments in most other parts of the "consolidated" land-use lawsuits that seek to overturn the land-use restrictions of the new plan.

Horne wrote that the overlay districts that gave teeth to the environmental protections "significantly restrict development" in environmentally sensitive areas of the county. However, announcements of the public hearings did not give landowners enough information about what was at stake.

The public, wrote Horne, "is furnished no information as to permitted densities, uses, or building restrictions for parcels lying within these districts ... the overlay districts impose significant restrictions on the use and development of land."

The overlay districts at issue were the River and Stream Corridor Overlay District, the Mountainside Development Overlay District and the Limestone Conglomerate Overlay District.

Scott York (I-at large) chaired the 2000-2003 Board of Supervisors that developed the new comprehensive plan as a tool to control growth. "I'm pleased that everything else was upheld," he said, "but am somewhat concerned about the environmental portion of it. The board will have to talk to the county attorney to see what we do next."

The board that took office Jan. 2004 stripped York of most of his powers beyond convening the meetings. Most of its Republican majority have expressed bitter enmity toward the environmental protections in the new laws governing development.

Re-enacting those overlay districts, or appealing the decision, said York, is "a decision they will have to make. We will see."

Horne ruled that the public notice of the intent to amend the zoning ordinance, in order to enact the three overlay districts, did not meet the requirements of state law. He will issue an injunction prohibiting the county from enforcing the overlay districts and ruled that they are void ab initio ("from the beginning") - they never existed.

Nearly 200 landowners brought lawsuits against the county in the 30 days after the Board of Supervisors amended the county's zoning ordinance on Jan. 6, 2003. Many of those cases were brought by developers and alleged identical infringements of their land development rights. The court consolidated those cases.

The zoning ordinance amendments were necessary to put the philosophies of the new comprehensive plan, adopted in July 2002, into effect.

Horne ruled that the advertisements telling the public about public hearings for the rest of the zoning ordinance amendments - down zoning to large lots in the

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west -- did meet the requirements of state law.

State law does not require that the entire text of the proposed amendments be printed in the advertisements, wrote Horne. A published notice of a zoning ordinance amendment meets the requirements of state law if a citizen can "reasonably determine" from the published notice whether "he or she was affected" by the proposed amendments.

Newspaper advertisements for the public hearings on the zoning ordinance amendments, scheduled for Nov. 2 and 6, 2002, referred to "Provisions to implement the Green Infrastructure policies in the revised General Plan by various means including, without limitation, imposition of environmental overlay districts ..."

Citizens got such notice in all parts of the public advertisements except the part dealing with the overlay districts, wrote Horne.

The consolidated lawsuits also asked the court to nullify the down zoning in the western part of the county to 10-, 20- and 50-acre lots. Horne did not do that but left the question open for more arguments.